

Consumer Action

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Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

Re: Truth in Lending – Proposed Rule: Regulation Z Part 226; Docket No. R-1366

Dear Members of the Federal Reserve Board:

Consumer Action¹ provides the following comments on the proposed changes to the regulations under the Truth in Lending Act. Consumer Action educates and advocates for many low- to moderate-income consumers who will be affected by your decisions.

Our organization supports the Board's significant changes in the disclosure rules, as well as the expansion of substantive rules. We want to highlight the Board's most important proposed changes and encourage the Board to use its authority more assertively to ban unfair mortgage practices.

Consumer Action strongly supports the Board's ban on yield-spread premiums. One cause of the irresponsible lending that led to the subprime mortgage meltdown has been the payment of yield-spread premiums to loan originators – both lender employees and independent brokers – for giving borrowers loans with higher interest rates or disadvantageous terms such as prepayment penalties. We support the Board's proposed ban on all yield-spread premiums that are based on loan terms or conditions, including the loan amount. We suggest that the Board adopt a full ban on yield-spread premiums. Loan originators should be banned from deceiving consumers by offering them less favorable terms than they deserve based on their credit history and other circumstances.

Consumer Action also strongly supports the Board's proposed ban on loan originators being paid from two sources – both the lender and the consumer. This double dipping has led to many marketplace deceptions that are not fair to consumers. Limiting

¹ Consumer Action (www.consumer-action.org) is a non-profit organization founded in San Francisco in 1971. During its more than three decades, Consumer Action has continued to serve consumers nationwide by advancing consumer rights, referring consumers to complaint-handling agencies through our free hotline, publishing educational materials in Chinese, English, Korean, Spanish, Vietnamese and other languages, advocating for consumers in the media and before lawmakers, and comparing prices on credit cards, bank accounts, telephone plans and other consumer goods and services.

payment to one source will reduce the incentives originators have to increase the price of the loans.

However, improved disclosures will not in and of themselves prevent dangerous, predatory mortgage lending. In its amendments to TILA rules the Board has still failed to use its authority to prohibit blatantly unfair and widespread anti-consumer practices. With the key exception of yield-spread premiums, the Board continues to allow creditors to write abusive, predatory loans, and is merely providing alternative requirements for disclosing abusive terms while not stopping the underlying deceptive practices.

We ask the Board to stop unfair practices in the mortgage market by including these elements in its rules:

- Ban payment option ARM terms for all loans secured by the borrower's principal residence.
- Extend the determination of the borrower's ability to repay that currently applies only to higher cost loans, to all mortgage loans secured by a borrower's principal residence.
- Require underwriting for all adjustable rate loans to determine the borrower's ability to repay the highest possible payment amount that may occur under the loan terms—not just the initial rate.
- Prohibit the initiation of a foreclosure unless a HAMP loan modification analysis has been completed and denied.

We support the following key improvements to the new disclosures proposed by the Board:

As the annual percentage rate or APR is the single number that captures all loan costs, including interest and fees, it is important for this disclosure to be meaningful and accurate. The existing rules are full of holes, making the APR a poor indicator of the true cost of a loan. We support the Board's proposal to adopt a sweeping all-in rule to include credit insurance premiums, fees for recording and releasing the security interest, most closing costs, and all settlement agent charges.

We also support the Board's proposal to require creditors to disclose a chart to show exactly how the APR offered to a particular consumer compares to the average rate for prime loans and to current rates for higher priced loans. This requirement will help alert consumers when they are offered a bad deal – something that loan originators have been able to obscure.

Until a recent change in the law by Congress, creditors were not required to provide TILA disclosures before closing on re-fi loans. Consumers often arrived at closing only to find significant changes in important loan terms. Closing is far too late to back out of the loan even if the consumer is able to detect the change amid piles of papers. The Board is proposing two alternatives to address this problem. One would require re-disclosure and a three-day waiting period if any loan term changes. The other would require this only if the APR changed or an adjustable rate feature was added. Consumer Action believes the Board should adopt three-day disclosure for any change in terms. In addition, the Board should prevent consumers from any opportunity to waive these protections.

The Board's redesigned disclosure forms have replaced obscure language with tables and plain language and eliminated information (such as the Consumer Handbook on Adjustable Rate Mortgages) that consumers do not find useful. We suggest that the Board require use of the improved language.

The Board requirement for creditors to make special disclosures regarding certain risky loan terms (such as prepayment penalties, interest only payments, negative amortization, balloon payments, demand features, no- and low-doc loans and shared equity) is a significant improvement.

We appreciate how far the Board has come in its recognition of the harm that unfair practices can have on homeowners, neighborhoods, and the economy. We appreciate the many significant improvements that the Board is proposing to disclosure rules. We urge the Board to use the authority granted it by Congress to move more assertively to stop continuing unfair mortgage practices.

Sincerely,



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